

17996 PL-2 Weiskopf

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-200065.3

DATE: May 6, 1981

MATTER OF: InterAmerica Research Associates, Inc.

DIGEST:

[Protest of agency's nomination of firm for subcontract award] by Small Business Administration under section 8(a) of Small Business Act is denied since protester has failed to show that agency's actions in withdrawing initial nomination and then resubmitting it resulted from fraud or bad faith.

InterAmerica Research Associates, Inc. [protests the manner in which the Federal Energy Regulatory Commission (FERC) nominated an offeror to the Small Business Administration (SBA) for a subcontract award] under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III 1979). The contract is for the design, installation and operation of an in-house micrographic system with a computer-based indexing capability. InterAmerica states that [an earlier nomination of that firm to the SBA for a similar requirement was withdrawn by FERC. InterAmerica believes that it was improper for FERC to conduct negotiations with the same offeror for purposes of deciding whether to renominate the firm.]

The protest is denied.

[Under the 8(a) program Government agencies may fulfill a procurement requirement by entering into prime contracts with the SBA which then arranges for the performance of the contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The SBA may

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authorize the procuring agency to select a potential subcontractor and nominate it to SBA for its approval. }
See Arawak Consulting Corporation, 59 Comp. Gen. 522
(1980), 80-1 CPD 404.

FERC issued solicitation No. FERC-80-TP-0002 on June 2, 1980, requesting technical proposals in order to evaluate potential SBA subcontractors. [After receiving and evaluating several proposals, FERC nominated Automated Services, Inc. (ASI) but withdrew the nomination after protests were filed] by InterAmerica and TS Infosystems, Inc. [Both protesters alleged that ASI's proposal did not meet the solicitation's technical requirements. However, since the withdrawal rendered the protests moot, both protesters decided not to pursue the matter.]

[Subsequently, FERC conducted negotiations with three 8(a) concerns] including ASI and InterAmerica, which resulted in ASI's renomination. SBA has not yet acted on the nomination.]


[The protester alleges that when FERC withdrew ASI's nomination SBA granted FERC permission to conduct negotiations with the next highest technically ranked firm-- InterAmerica]--only, and that [the ensuing technical discussions with ASI and other offerors were a sham to provide a basis to permit ASI back into the competition, and thus were conducted in bad faith.]

Because of the broad discretion afforded SBA under the Small Business Act, [this Office will not review SBA's determinations under the 8(a) program or nominations made on its behalf absent a showing of fraud or bad faith on the part of Government procurement officials.] Arawak Consulting Corporation, supra.

[The protester has submitted no evidence that FERC's withdrawal of ASI's nomination and subsequent discussions were not in good faith.] SBA informally advises that the initial nomination of ASI was withdrawn because the firm's price proposal was too high, and that the subsequent negotiations and nomination simply involved a reduced scope of work. SBA also has informed us that contrary to InterAmerica's assertion, [SBA never restricted FERC to conducting these negotiations with only the protester. In the absence of such a restriction,

and because we are unaware of any regulation or rule which would have prohibited FERC from permitting ASI back into the competition after initially withdrawing that firm's nomination, we cannot conclude that the negotiations were conducted in bad faith. In other words, [the determination to conduct these discussions was within the discretion of the agency, acting on behalf of the SBA. Moreover, whether or not SBA decides to award a subcontract to ASI is a matter for SBA to determine.] See American Electronic Laboratories, Inc. -- Reconsideration, B-199392.2, September 2, 1980, 80-2 CPD 166.

[The protest is denied.]


Acting Comptroller General
of the United States